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perior or general jurisdiction are not liable in civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly. *Bradley v. Fisher*, 13 Wall. 335, 354; *Pratt v. Gardner*, 2 Cush. (Mass.) 63, 48 Am. Dec. 652. If the jurisdiction is merely exceeded or there is a colorable invocation of jurisdiction, the justice cannot be held liable where he has acted in good faith and there was no malice or corruption. *McCall v. Cohen*, 16 S. C. 445, 42 Am. Rep. 641; *Broom v. Douglas*, *supra*; *Austin v. Vrooman*, 128 N. Y. 229, 28 N. E. 477, 14 L. R. A. 138. The great weight of authority is in accord with the instant case in holding that if a justice of the peace or an inferior judicial officer acts corruptly or maliciously where he has jurisdiction of both the subject matter and the person, his acts entail no civil responsibility. *Gordon v. District Court*, 36 Nev. 1, 131 Pac. 134; *Dixon v. Cooper*, 109 Ky. 29, 58 S. W. 437; *Curnow v. Kessler*, 110 Mich. 10, 67 N. W. 982; *Lacey v. Hendricks*, 164 Ala. 280, 51 So. 157, 137 Am. St. Rep. 45, and note; *Scott v. Fishblate*, 117 N. C. 265, 23 S. E. 436, 30 L. R. A. 696. Some cases are to be found, however, which hold directly or *obiter* that a justice of the peace acting within his jurisdiction is civilly liable for acts done maliciously and without probable or reasonable cause. *Gault v. Wallis*, 53 Ga. 675; *Cope v. Ramsey*, 49 Tenn. 197; *Kennedy v. Barnett*, 64 Pa. St. 141; *Knell v. Briscoe*, 49 Md. 414; *Howe v. Mason*, 14 Iowa 510.

It would seem, then, that a justice of the peace is liable in all cases where he acts wholly without jurisdiction irrespective of malice or corruption; and that judicial immunity to a civil action extends to a justice, though he acts maliciously and corruptly, where he acts wholly within his jurisdiction and possibly where he acts merely in excess of his jurisdiction or where there is colorable jurisdiction.

For further discussion, see 1 VA. LAW REV. 645.

INFANTS—UNBORN CHILDREN—RIGHT TO MAINTAIN AN ACTION FOR INJURIES.—The mother of the plaintiff fell into a coal hole on the public sidewalk, and as a result the plaintiff, subsequently born, was injured for life. The defendant demurred to the plaintiff's complaint to recover damages for such injuries. *Held*, the demurrer is overruled. *Drobner v. Peters*, 186 N. Y. Supp. 278. For a discussion of the principles involved, see 4 VA. LAW REV. 411.

INSURANCE—CONSUMMATION OF CONTRACT—TENDER OF PREMIUM.—An application for life insurance was made and signed on March 28th. Among other stipulations, it contained the following: "—no liability shall exist until a policy as applied for shall have been issued and delivered to me and the first premium thereon actually paid during my life-time—". Medical examination, showing applicant to be in good health was approved April 12th. The policy was dated April 11th, and was mailed at the home office of the company to the agent on April 13th. The applicant was taken ill on April 13th. At about 8 o'clock a. m. on April 15th the first premium was tendered by a friend of applicant, and the applicant died at about 1:30 p. m. the same day. *Held*, the insurance

company is not bound under the policy. *McKenzie v. Northwestern Mut. Life Ins. Co.* (Ga. App.), 105 S. E. 720.

An insurance company can legally make the payment of the initial premium a condition precedent to the liability of the company. *Hipp v. Fidelity Ins. Co.*, 128 Ga. 491, 57 S. E. 892, 12 L. R. A. (N. S.) 319. Incapacitating illness or insanity will not excuse failure to pay premium. *Wheeler v. Conn. Mut. Life Ins. Co.*, 82 N. Y. 543, 37 Am. Rep. 594, and note. By the better view, war between the territories in which insurer and insured reside is no excuse. *New York Life Ins. Co. v. Davis*, 95 U. S. 425. But *contra*, *Manhattan Life Ins. Co. v. Warwick*, 20 Gratt. (Va.) 614, 3 Am. Rep. 218 (note dissent); *Cohen v. New York Life Ins. Co.*, 50 N. Y. 610, 10 Am. Rep. 522.

Where payment is made a condition precedent, the first payment of a life insurance premium by a third person, without the knowledge of the insured, is of no effect. *Whiting v. Mass. Ins. Co.*, 129 Mass. 240, 37 Am. Rep. 317. And, even where payment is made with knowledge of the insured, if made when he is *in extremis* without the company having any idea of the condition of the dying man, it is of no effect. *Piedmont Life Ins. Co. v. Ewing*, 92 U. S. 377.

When the application provides that the contract shall not be complete until delivery, delivery is essential. *Bowen v. Prudential Ins. Co.*, 178 Mich. 63, 144 N. W. 543, 51 L. R. A. (N. S.) 587. When the application provides that the policy shall not take effect unless it is delivered to the insured and the first premium is paid while he is in good health, such provision is enforceable. *Metropolitan Life Ins. Co. v. Howle*, 68 Ohio St. 614, 68 N. E. 4. And this seems to be true on principle, whether or not an express stipulation to that effect is contained in the application. *Whitley v. Piedmont Life Ins. Co.*, 71 N. C. 480. Concealment of a change in health before the consummation of the insurance contract is a fraud upon the insurer. *Equitable, etc., Society v. McElroy*, 83 Fed. 631. And a change in health after application and before the policy is issued and is consummated will relieve the company from its consummation. *Southern Life Ins. Co. v. Kempton*, 56 Ga. 339; *Whitley v. Piedmont Life Ins. Co.*, *supra*.

Tender of payment is of no effect if the insurer has already declared the policy forfeited or refused to receive the premium when tendered. *MacMahon v. U. S. Life Ins. Co.*, 128 Fed. 388, 68 L. R. A. 87.

INSURANCE—WAR—LIABILITY OF INSURER UNDER AN EXEMPTION CLAUSE.—A provision in a life insurance policy exempted the insurer from liability if the insured's death should result directly or indirectly, wholly or partly, from war. The insured, a neutral passenger on board the *Lusitania*, an unarmed British merchantman, lost his life by drowning when the latter ship was torpedoed and sunk without warning and without provision being made for the safety of those on board by an ordered act of an enemy German submarine. *Held*, this constituted an act of war and the insurer was not liable. *Vanderbilt v. Travelers' Ins. Co.*, 184 N. Y. Supp. 54. See NOTES, p. 552.